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State v. Worsham Respondent's Brief Dckt. 44769

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44769
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2016-7079
)	
PHILLIP ANTHONY ROBERT WORSHAM,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Worsham failed to establish that the district court abused its discretion, either by imposing a unified sentence of seven years, with two years fixed, upon his guilty plea to possession of methamphetamine, or by relinquishing jurisdiction?

Worsham Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Worsham pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.65-66.) Following the period of retained jurisdiction, the district

court relinquished jurisdiction. (R., p.76.) Worsham filed a timely notice of appeal. (R., pp.87-90.)

Worsham asserts his sentence is excessive in light of the nature of the offense, his difficult childhood, and his substance abuse issues. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at

148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two years fixed, which falls well within the statutory guidelines. (R., pp.65-66.) Furthermore, Worsham’s sentence is appropriate based on his criminal record alone. Between the ages of 15 and 17, Worsham was adjudicated for resisting and/or obstructing an officer, twice for burglary, twice for “threaten crime with intent to terrorize,” and three times for battery with serious bodily injury. (PSI, pp.7-9.) His juvenile record also contains numerous other charges that were “handled informally” or “transferred to other jurisdiction/authority,” including charges for “fight/challenge fight public place,” two separate counts of battery, “assault on person,” battery on a school employee with injury, battery on a peace officer/emergency personnel/etc., and “threaten crime with intent to terrorize,” as well as charges for which the disposition is not noted, including “battery on person,” battery on a peace officer/emergency personnel/etc., and two separate counts of “threaten crime with intent to terrorize.” (PSI, pp.6-10.)

Despite having completed programming as a juvenile, Worsham’s violent and criminal behavior continued unabated after he reached adulthood. (PSI, p.16.) Between 2012 and 2016, Worsham amassed criminal convictions for battery, burglary, robbery, battery with serious bodily injury, assault with a deadly weapon, possession of a weapon with intent to assault (amended from aggravated assault), two convictions for

“threaten crime with intent to terrorize,” carrying a concealed dirk or dagger, possession of a controlled substance, false identification to specific peace officers, providing false identity information to a law enforcement officer, trespassing, disturbing the peace, “theft/petty theft,” “contempt: disobey court order/etc.,” vandalism, two convictions for “receive/etc. known stolen property,” two convictions for “possession of a controlled substance in prison/etc.,” and two convictions for “damaging jail/prison/etc.” (PSI, pp.10-15.) His record also includes numerous probation violations and he has “a long history of absconding from supervision.” (PSI, pp.10-16, 28.) At the time that Worsham committed the instant offense, he had a local probation violation pending, local charges pending for violation of a no contact order, and an outstanding warrant for violating his probation and absconding supervision in California. (PSI, pp.16, 28.)

Although Worsham claims he “left California hoping to start a new life in Idaho, without gangs or other bad influences, and he wanted to quit using meth” (Appellant’s brief, p.5), he was in Idaho for only “a week before he was arrested on the Aggravated Assault charge” in February 2016 (PSI, p.19). He subsequently spent “about a month” in jail and was placed on probation on April 28, 2016; however, he immediately resumed his criminal behavior and was charged with violation of a no contact order just 10 days later. (PSI, pp.15-16, 19.) Thereafter, he violated his probation in a Bonneville County case and continued to commit crimes – the presentence investigator noted that Worsham “accumulated arrests in five separate incidents” within four months of his arrival in Idaho. (PSI, pp.15-16, 19, 28.) In addition, Worsham reported that he was using both methamphetamine and marijuana daily up until the time that he was arrested for the instant offense. (PSI, p.23.) Worsham’s dangerous and violent behavior

continued while the instant offense was pending; jail staff reported that he was “placed in maximum security after repeated involvement in fights, attempting to conceal and take a razor blade back to his bunk, and repeated attempts to cap the door locks and interfere with jail security, among other things.” (PSI, p.16.) Worsham’s conduct since moving to Idaho does not indicate an ability or willingness to cease his substance abuse and criminal behavior.

The presentence investigator concluded:

While the defendant appears sincere in his desire to obtain assistance for his substance addiction, his criminality and reliance on violence to intimidate others and to handle every situation, makes him a serious ongoing threat to the community. I do not believe he is amenable to community supervision at this time, or that he would be an appropriate candidate for participation in a problem solving court. It appears that the numerous opportunities for change that have been afforded to the defendant have enabled his criminal behavior and lack of accountability. I believe he is in need of long-term treatment for his criminal thinking, violent impulses, and substance addiction through programming with the kind of structure that is only offered through a correctional institution. Therefore, I recommend Mr. Worsham be sentenced to the Idaho Department of Correction for a time to be determined by the Court.

(PSI, p.28.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Worsham’s sentence. (Tr., p.43, L.8 – p.48, L.23.) The state submits that Worsham has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Worsham next asserts that the district court abused its discretion by relinquishing jurisdiction because he “had problems adjusting” while in the program and was at the

NICI facility for less than one month before he was removed for being an unmitigated security risk. (Appellant's brief, pp.5-6.) Worsham has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. State v. Hansen, 154 Idaho 882, 889, 303 P.3d 241, 248 (Ct. App. 2013) (citing State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205–06, 786 P.2d 594, 596–97 (Ct.App.1990)). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013); Hansen, 154 Idaho at 889, 303 P.3d at 248 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

Worsham has demonstrated through his conduct that he is an unacceptable candidate either for community supervision or for placement in the rider program. Despite his abysmal history of criminal offending, violence, and misconduct while incarcerated, the district court granted Worsham the opportunity to participate in the rider program, informing him:

I will get a report at some point in the next couple of months about how you are doing. ... If you are not doing well, if you continue with some of the behavior that you have done here, such as hiding a razor blade and getting in fights, they'll recommend that I just send you to prison.

... If you can do well, then we'll bring you back and put you on probation. If not, I will release jurisdiction and confine you to prison.

(Tr., p.48, Ls.11-23.)

Worsham apparently disregarded the court's warning, as less than three months later, NICI submitted a report recommending that the district court relinquish jurisdiction. (APSI, pp.1-2.¹) NICI staff reported that Worsham had been transferred to "a more secure facility" due to his continuing violent conduct, and advised the court that Worsham "is not an appropriate candidate for the retained jurisdiction program at this time." (APSI, pp.1-2.) According to the NICI report and the attached C-Notes, Worsham incurred at least five incident reports and three DOR's – two of which were for battery – during his period of retained jurisdiction,. (APSI, pp.1-5.) NICI staff noted that Worsham "struggled to follow the rules and comply with expectations," was "very argumentative" and "aggressive" with staff, and continually questioned or disobeyed orders – even after multiple warnings. (APSI, pp.1-4.) Staff also reported that Worsham "appears to have consistent issues with his peers in the Unit. It doesn't seem to matter who the inmate is or what they say or do; Worsham appears to find a way to instigate an incident with them," and, "Worsham is constantly asking staff questions regarding physical altercations such as inquiring about what is the maximum detention time he would receive if he were to participate in a 'fight.'" (APSI, p.4.) The warden at NICI concluded:

Mr. Worsham has an extensive violent history. It is apparent that this pattern of behavior has continued to interfere with his ability to get the programming he would need to make changes in his life. His continued use of violence, for seemingly routine matters, suggests a significant, pro-

¹ APSI page numbers correspond with the page numbers of the electronic file "Rider Information.pdf."

criminal attitude and belief system. Given the serious nature of his behaviors, and his apparent unwillingness to modulate his interactions with other offenders as well as staff, it appears that Mr. Worsham is not an appropriate candidate for the retained jurisdiction program at this time. Given his propensity for violent aggression, we would recommend the court relinquish jurisdiction in this matter and impose Mr. Worsham's sentence with the Idaho Department of Correction.

(APSI, p.2.)

The district court's decision to relinquish jurisdiction was appropriate in light of Worsham's horrendous behavior throughout his period of retained jurisdiction. Although Worsham was only in the rider program for a short period of time, he clearly demonstrated that he was neither a suitable candidate for the rider program – due to his lack of amenability to the programming and the security risk he presents, nor was he a viable candidate for community supervision, in light of his incessant violence toward others and refusal to comply with rules. Given any reasonable view of the facts, Worsham has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Conclusion

The state respectfully requests this Court to affirm Worsham's conviction and sentence and the district court's order relinquishing jurisdiction.

DATED this 30th day of June, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of June, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: All right. Are you fully satisfied
2 with the representation of your attorney up to this
3 point?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Mr. Crane, is there legal reason why
6 I should not sentence the defendant today?

7 MR. CRANE: Not that I'm aware of.

8 THE COURT: Mr. Worsham, based upon your plea of
9 guilty, it is the judgment of this Court that you are
10 guilty of the crime of possession of a controlled
11 substance, the substance being methamphetamine.

12 I have carefully reviewed the Presentence
13 Investigation Report along with the -- I've listened to
14 your counsel, as well as the argument of the State, as
15 well as to your statement.

16 Both of them have referred to the objectives of
17 criminal punishment. I'm going to just put those on the
18 record what the Court has the obligation to consider.

19 The Court has to consider protecting society.

20 The Court has the obligation of deterring you and
21 others from committing this type of crime.

22 The Court is required to look at the possibility
23 of rehabilitation for you, as well as punishment or
24 retribution for wrongdoing.

25 You're young still, 22 years old. Your ISI score

43

1 is a 40. That's a very high risk for re-offense. And I
2 think that's partly based upon fact that the PSI shows
3 that it's your sixth felony, and at 22 years old that's
4 a substantial record you've got before you.

5 I acknowledge and there are some mitigating
6 factors. Here I want to refer to page 27 in the
7 "Summation" portion of investigator's comments. And I
8 see this as a mitigating factor. It indicates that
9 defendant described an extraordinarily difficult
10 childhood.

11 You grew up in and out of foster care and
12 juvenile detention facilities in Northern California.
13 "He was exposed to drug and alcohol abuse, physical and
14 sexual abuse, poverty, criminal activity, and a great
15 deal of instability in the homes and places where he
16 lived. He became involved in gang activity at some
17 point."

18 It indicates you refused to discuss the situation
19 further; however, your counsel has explained those
20 reasons.

21 You were able to graduate from high school, which
22 I think goes to your credit.

23 You are currently unemployed and homeless, but
24 you have hopes of getting a job. I find those all
25 mitigating circumstances.

44

1 Frankly, I thought it was interesting as well,
2 you speak Cambodian.

3 THE DEFENDANT: I am Cambodian.

4 THE COURT: I noted that. And I think that you
5 grew up in a bilingual home, I think that that's -- like
6 I said, there's a possibility of employment with that
7 and I think there's some hope for you.

8 The drug treatment recommendation is a 2.1. Your
9 counsel has recommended probation. The State has argued
10 for a retained jurisdiction.

11 The Court has the obligation under Idaho Code
12 19-2521 to consider the factors relative to the question
13 of whether I should place you on probation or confine
14 you to prison. And that's what the Court has to do is
15 make that determination.

16 There are certainly some aggravating factors. I
17 refer to page 28 of the presentence report. As I've
18 already indicated, this is your sixth felony. You have
19 reported periods of incarceration of up to one and a
20 half years as a juvenile, with multiple periods of
21 incarceration as an adult.

22 It appears you might become or have become
23 institutionalized to a certain extent. You have had
24 violent offenses in the past, including assaulting
25 police officers, possession of weapons in a robbery.

45

1 Since you have arrived in Idaho, you have been
2 placed on misdemeanor probation. And then you violated
3 that probation less than a month later by picking up
4 this new charge.

5 So on the one hand, Mr. Worsham, you indicated
6 you moved here to Idaho to make a change, and, frankly,
7 your counsel was very eloquent and pretty persuasive
8 about the fact that you wanted to make a break from
9 California and come to a completely new place to make a
10 change.

11 And I'm not sure in your position -- in your
12 situation if you had good intentions, but didn't know
13 how to implement that, didn't know how to make the
14 change, or if this is the person you are. It's hard for
15 the Court to know.

16 I do find it encouraging that you did try to make
17 a change. And I noted that comment that your counsel
18 made too, that it was your goal to -- that you were
19 surprised to be 22 years old.

20 And so, certainly, the Court in considering all
21 the criteria relative to the question of whether I
22 should place you on probation or confine you to prison,
23 it is going to be the judgment of this Court that you be
24 sentenced as follows.

25 I order that you be sentenced to the custody of

46

1 the Idaho Department of Corrections for a minimum term
2 of two years followed by an indeterminate term of five
3 years for a total of seven years.

4 I'm going to order a fine in the amount of \$1000.

5 I'm going to order standard court costs and
6 payments into the Victims Relief Fund.

7 I will order restitution or reimbursement to the
8 State for \$455.02, as well as reimbursement to the
9 county for public defender service in the amount of
10 \$500.

11 Mr. Worsham, your record, frankly, indicates you
12 should probably go to prison. I -- when I prepare for a
13 sentencing like this, I have an idea of what I am going
14 to do. And, frankly, when I came in, I'd say that you
15 had a greater than 50 percent chance of going to prison
16 today.

17 However, I find your counsel's been very
18 persuasive, the State has been persuasive, and the Court
19 at this point is going to retain its jurisdiction and
20 send you on a rider. That will leave it up to you.
21 Because as I've indicated, I am not quite sure what kind
22 of person you are.

23 I am hopeful that you can get a chance, you can
24 learn some skills on a retained jurisdiction program,
25 and hopefully we can place you on probation and give you

47

1 those skills to become successful -- either here or
2 somewhere else -- but successful in our community as a
3 whole.

4 So it's going to be the sentence -- I'm going to
5 retain jurisdiction up to a period of 365 days,
6 recommend that you be placed on the rider program. And
7 how that works -- I'm sure your counsel's explained
8 this -- but they will place you in a program in the
9 rider program that includes classes, education,
10 employment.

11 I will get a report at some point in the next
12 couple of months about how you are doing. If you are
13 doing well, then I will bring you back and place you on
14 probation. If you are not doing well, if you continue
15 with some of the behavior that you have done here, such
16 as hiding a razor blade and getting in fights, they'll
17 recommend that I just send you to prison.

18 So as argued by the State and by your counsel,
19 they're going to give you a chance and I agree. We
20 should give you a chance and see how you do. If you can
21 do well, then we'll bring you back and put you on
22 probation. If not, I will release jurisdiction and
23 confine you to prison.

24 Do you have any questions about the sentence?

25 THE DEFENDANT: No, Your Honor.

48

1 THE COURT: Do you have any questions?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: I don't have the amount of time that
4 you have spent in custody. I will give you credit for
5 that time.

6 Mr. Crane, do you know by chance?

7 MR. CRANE: He's been in custody since --

8 THE DEFENDANT: Seventy-nine days.

9 THE COURT: If it's 79 days, we'll give you
10 credit for that. We'll do an additional count, and if
11 it is, we'll put the correct number in there.

12 You are advised, sir, that you have the right to
13 appeal to the Idaho Supreme Court from this judgment of
14 conviction; that you have a right to be represented by
15 an attorney in that appeal. You are also advised that
16 if you cannot afford an attorney, then an attorney will
17 be appointed to you at public expense; however, you only
18 have 42 days from today's date to file such an appeal.

19 You also have a right to seek relief under Idaho
20 Criminal Rule 35. This gives you 120 days to seek a
21 correction or reduction of the sentence if you feel it
22 was illegal or unduly harsh.

23 You also have the right to seek relief under the
24 Idaho Uniform Post-Conviction Relief Act. Such an
25 action must be filed within one year from the date that

49

1 your right to appeal expires.

2 I failed to do this, but I will order the
3 collection of a DNA sample and a right thumbprint
4 consistent with Idaho code, and the Department of
5 Corrections can take care of that.

6 Any questions about your appellate rights,
7 Mr. Worsham?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: All right. Then as argued by your
10 counsel, it's going to be up to you. We'll see how you
11 do. I'm hopeful that you do well on a retained
12 jurisdiction.

13 We will be in recess. If we can collect the
14 presentence reports, and I will sign those documents,
15 Mr. Clark.

16 (Proceedings concluded.)

50